

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

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4
5 KARLA GONZALEZ and JAIME RETIGUIN
6 BARBA, SR.,

7 Plaintiffs,

8 vs.

9 ALLIED COLLECTION SERVICES, INC.,

10 Defendant.

2:16-cv-02909-MMD-VCF

ORDER

MOTION TO STAY DISCOVERY (ECF No. 33)

11
12 Before the Court is Defendant Allied Collection Services, Inc.’s (“Allied”) Motion to Stay
13 Discovery. (ECF No. 33). For the reasons discussed below, Allied’s motion is denied.

14 **BACKGROUND**

15 Allied obtained a signed confession of judgment from Jaime Retiguin (a non-party in this case) in
16 Las Vegas Justice Court case 16C011433. (ECF No. 10 at 3). Allied attempted to garnish funds from
17 Retiguin’s bank account, but the money was actually taken from the account of Jaime Retiguin Barba, Sr.,
18 Retiguin’s father. (*Id.* at 6). Once notified of the mistake, Allied returned most of the money “but refused
19 to fully reimburse Barba.” (*Id.* at 7).

20 On September 1, 2016, Allied issued a Writ of Execution against Karla Gonzalez, Retiguin’s wife.
21 (*Id.* at 4). On October 3, 2016, Gonzalez filed a motion in the Justice Court case arguing that she was not
22 responsible for the debt and the debt was already paid. (*Id.*). Gonzalez retained counsel that appeared at
23 a hearing on November 7, 2016, where Allied agreed to cease garnishing Gonzalez’s wages. (*Id.*).

24 Gonzalez and Barba subsequently filed this action claiming Allied violated the Fair Debt
25 Collection Practices Act (“FDCPA”). (ECF No. 10 at 7-8). Allied filed a motion to dismiss Plaintiff’s

1 amended complaint, arguing “the complaint should be dismissed because: (1) Mr. Barba is not a
2 ‘consumer,’ (2) Allied did not violate the FDCPA, and (3) many of Ms. Gonzalez’s allegations are barred
3 by principals of Judicial Admission; and Issue Preclusion.” (ECF No. 15 at 2). As part of the motion to
4 dismiss, Allied “requested that the Court take Judicial Notice of 19 Exhibits that demonstrate that the
5 Plaintiff’s claims are without merit.” (*Id.*).

6 Allied file a motion to stay discovery pending the resolution of its motion to dismiss. (ECF No.
7 33). Allied argues it is likely to succeed in its motion to dismiss because the statutes cited in the complaint
8 do not apply to Barba and Allied was not threatening to Barba. (*Id.* at 5). In addition, Allied asserts
9 Gonzalez’s “claims in the current matter are clearly inconsistent [with the claims she made in the Justice
10 Court case] and thus, should be barred by Judicial Estoppel.” (*Id.* at 7). While it is difficult to understand
11 what claims Allied is referring to in its motion for stay, Allied appears to reference allegations regarding
12 when Allied became aware that at least a portion of Retiguin’s debt had been repaid.¹ (ECF No. 15 at 14-
13 25).

14 DISCUSSION

15 I. Legal Standard

16 When evaluating a motion to stay discovery while a dispositive motion is pending, the court
17 initially considers the goal of Federal Rule of Civil Procedure 1: the Rules “should be construed and
18 administered to secure the just, speedy, and inexpensive determination of every action.” The Rules do not
19 provide for automatic or blanket stays of discovery when a potentially dispositive motion is pending.
20 *Ministerio Roca Solida v. U.S. Dep’t of Fish & Wildlife*, 288 F.R.D. 500, 502 (D. Nev. 2013). Pursuant
21 to Federal Rule of Civil Procedure 26(c)(1), “[t]he court may, for good cause, issue an order to protect a
22 party or person from annoyance, embarrassment, oppression, or undue burden or expense.” “[A] party
23 seeking a stay of discovery carries the heavy burden of making a strong showing why discovery should
24

25 ¹ The Court notes that any claims Gonzalez may have previously made that Retiguin’s debt was not community property are
no longer at issue in the amended complaint.

1 be denied.” *Ministerio Roca Solida*, 288 F.R.D. at 503. Generally, imposing a stay of discovery pending
2 a motion to dismiss is permissible if there are no factual issues raised by the motion to dismiss, discovery
3 is not required to address the issues raised by the motion to dismiss, and the court is “convinced” that the
4 plaintiff is unable to state a claim for relief. *Wood v. McEwen*, 644 F.2d 797, 801-02 (9th Cir. 1981); *Rae*
5 *v. Union Bank*, 725 F.2d 478, 481 (9th Cir. 1984).

6 Courts in the District of Nevada apply a two-part test when evaluating whether a discovery stay
7 should be imposed. *See TradeBay, LLC v. Ebay, Inc.*, 278 F.R.D. 597, 600 (D. Nev. 2011). First, the
8 pending motion must be potentially dispositive of the entire case or at least the issue on which discovery
9 is sought. *Id.* Second, the court must determine whether the pending motion to dismiss can be decided
10 without additional discovery. *Id.* When applying this test, the court must take a “preliminary peek” at the
11 merits of the pending dispositive motion to assess whether a stay is warranted. *Id.* The purpose of the
12 “preliminary peek” is not to prejudge the outcome of the motion to dismiss. Rather, the court’s role is to
13 evaluate the propriety of an order staying or limiting discovery with the goal of accomplishing the
14 objectives of Rule 1.

15 **II. DISCUSSION**

16 Allied’s motion to dismiss is potentially dispositive and needs no further discovery to resolve, as
17 it has been fully briefed.² However, without prejudging the outcome of the motion, the Court is not
18 convinced that Plaintiffs are unable to state a claim for relief against Allied.

19 **A. Barba’s Claims Against Allied**

20 Allied argues Barba cannot bring a claim under the FDCPA because he is not a consumer:³ “any
21 natural person obligated or allegedly obligated to pay any debt.” 15 U.S.C. § 1692a(3). Allied asserts
22

23 ² There are pending motions to strike portions of Allied’s reply in support of its motion to dismiss (ECF No. 21) and to extend
24 the page limit of the reply (ECF No. 22), but this briefing should not lead to any further discovery on the motion to dismiss.

25 ³ There appears to be some debate in the courts on this issue, though both parties have failed to address it because Plaintiffs
assert Barba is a consumer. *See Robinson v. Managed Accounts Receivables Corp.*, 654 F. Supp. 2d 1051, 1057 (C.D. Cal.
2009) (stating “the plaintiff must be a ‘consumer’” to recover under the FDCPA); *Aviles v. Wayside Auto Body, Inc.*, 49 F.

1 Barba is not a “consumer” because the money was only taken from his account inadvertently and he was
2 not the intended target of the garnishment. (ECF No. 33 at 5-6). While the parties agree that Barba should
3 not have paid any amount of his son’s debt, the parties also agree that (1) Barba’s bank account was
4 actually garnished for a period of time and (2) the full amount taken from Barba’s bank account has not
5 been returned. Barba argues he is a “consumer” under the FDCPA because Allied took money from him
6 without justification to pay a debt and refused to refund the entire amount. (ECF No. 34 at 12-13). This
7 appears to be a novel issue of law. This Court cannot reach a conclusion on this issue, as it would
8 impermissibly prejudge the outcome of the motion to dismiss. However, the Court notes that Barba has
9 suffered a financial harm, which weighs in favor of finding that Barba has standing in this case.

10 In addition, the Court cannot simply rely Allied’s factual contentions to grant its motion to stay
11 discovery. Allied asserts it did not violate the FDCPA with regards to Barba because the only interaction
12 to take place between Allied and Barba was a letter Barba wrote to Allied. (ECF No. 33 at 6). However,
13 the amended complaint asserts that “allied told Barba that it refused to fully refund Barba’s loss.” (ECF
14 No. 10 at 7). Without prejudging the outcome of the motion to dismiss, it appears that there is a factual
15 dispute regarding the contact between Allied and Barba that could prevent the Court from granting
16 Allied’s motion to dismiss. Because the Court is not convinced that Barba is unable to state a claim for
17 relief, the Court denies Allied’s motion to stay discovery with respect to Barba.

18 **B. Gonzalez’s Claims Against Allied**

19 Allied’s motion to dismiss relies on the Court (1) taking judicial notice of 19 attached exhibits and
20 (2) applying the doctrines of judicial estoppel or issue preclusion to Gonzalez’s claims. (ECF No. 15 at
21 2). The decisions to take judicial notice or apply the doctrines of judicial estoppel and issue preclusion
22 are left to the discretion of the court. *See Lee v. City of Los Angeles*, 250 F.3d 668, 689 (9th Cir. 2001);
23 *Hamilton v. State Farm Fire & Cas. Co.*, 270 F.3d 778, 782 (9th Cir. 2001); *Robi v. Five Platters, Inc.*,

24 _____
25 Supp. 3d 216, 228 (D. Conn. 2014) (“many courts from other circuits have held that standing under section 1692f is not limited
to ‘consumers’ and instead extends to ‘anyone aggrieved by a debt collector’s’” actions).

1 838 F.2d 318, 321 (9th Cir. 1988). The fact that Allied's motion to dismiss relies on such discretionary
2 arguments weighs against granting Allied's motion to stay discovery.

3 In addition, assuming the Court takes judicial notice of Allied's exhibits and applies judicial
4 estoppel or issue preclusion in evaluating Allied's motion to dismiss, the Court is not convinced that
5 Allied's motion will be granted. Allied asserts that the Justice Court case filings indicate that Allied only
6 received notice that payments had been made on Retiguin's debt when Gonzalez filed her October 3
7 motion in the Justice Court case. (ECF No. 15 at 8, 16-18). Since Allied filed its Writ of Execution in
8 September, Allied argues that Gonzalez cannot claim that Allied took improper steps in collecting the
9 debt. (*Id.*). However, Plaintiffs contend that Allied took actions after the October 3 motion that were
10 improper under the FDCPA, such as misrepresenting to the Justice Court that Gonzalez's motion was
11 brought in bad faith. (ECF No. 10 at 5, ECF No. 34 at 8-11). Allied's arguments do not address actions
12 Allied allegedly took after the October 3 motion.

13 After a preliminary peek, the Court finds that Allied's motion to dismiss raises several
14 discretionary and factual issues that this Court cannot fully address at this time. Because the Court is not
15 convinced that Gonzalez is unable to state a claim for relief, the Court denies Allied's motion to stay
16 discovery with respect to Gonzalez.

17 ACCORDINGLY, and for good cause shown,

18 IT IS HEREBY ORDERED that Allied's Motion to Stay Discovery (ECF No. 33) is hereby
19 DENIED.

20 IT IS SO ORDERED.

21 DATED this 30th day of October, 2017.

22
23 
24 CAM FERENBACH
25 UNITED STATES MAGISTRATE JUDGE